U.S. Department of Labor

Office of Administrative Law Judges
St. Tammany Courthouse Annex
428 E. Boston Street, 1st Floor
Covington, LA 70433

(985) 809-5173
(985) 893-7351 (FAX)

Issue Date: 31 August 2006

CASE NO.: 2006-LDA-18

OWCP NO.: 02-141099

IN THE MATTER OF:

J.T.[1]

Claimant

v.

AMERICAN LOGISTICS SERVICES

Employer

and

ABDUL RAHMAN AL-GHANIM and
GEORGE H. LEE, JR.
Individually and As Principals

Employers

APPEARANCES:

JAY LAWRENCE FRIEDHEIM, ESQ.

For The Claimant

Before: LEE J. ROMERO, JR.
Administrative Law Judge

DECISION AND ORDER AWARDING BENEFITS

This is a claim for benefits under the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. § 901, et seq., (herein the Act), as extended by the Defense Base Act, 42

[1] Pursuant to a policy decision of the U.S. Department of Labor, the Claimant's initials rather than full name are used to limit the impact of the Internet posting of agency adjudicatory decisions for benefit claim programs.

U.S.C. § 1651, et seq., brought by Claimant against American Logistics Services (Employer, ALS) and Abdul Rahman Al-Ghanim and George H. Lee, Jr., Individually and as Principals (Employers).

The issues raised by the parties could not be resolved administratively and the matter was referred to the Office of Administrative Law Judges for hearing. Pursuant thereto, Notice of Hearing was issued scheduling a formal hearing on March 20, 2006, in Pensacola, Florida.

All parties were afforded a full opportunity to adduce testimony, offer documentary evidence and submit post-hearing briefs. Claimant offered 23 exhibits which were admitted into evidence. This decision is based upon a full consideration of the entire record.[2]

A post-hearing brief was received from the Claimant. Based upon the evidence introduced, my observations of the demeanor of the witnesses, and having considered the arguments presented, I make the following Findings of Fact, Conclusions of Law and Order.

Procedural Background

Claimant filed his claim on April 5, 2005, naming ALS as his employer. (CX-1, p. 1). An informal conference was held before the District Director on August 31, 2005. (CX-1, p. 2). The claims examiner also concluded that ALS did not have insurance coverage for injuries under the Defense Base Act pursuant to admissions made by George H. Lee, Jr., President and Chief Executive Officer of ALS. Jeffrey West was identified as Director of Finance and Accounting for ALS.

The District Director further concluded that under Section 38(a) of the Act, the President, Secretary and Treasurer of ALS shall be severally, personally liable, jointly with the corporation (ALS) for any compensation and medical benefits which may accrue due to injuries suffered by Claimant. He recommended that ALS, George H. Lee, Jr. and/or Jeffery West pay compensation and medical benefits due to Claimant's injury. (CX-1, p. 5). The District Director confirmed the foregoing in correspondence to George H. Lee, Jr. on August 11, 2005. (CX-2).

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[2] References to the transcript and exhibits are as follows: Transcript: Tr.___; and Claimant's Exhibits: CX-___.

Based on the evidence of record, I agree with and adopt the reasoning and conclusions of the District Director that Abdul Rahman Al-Ghanim, George H. Lee, Jr. and Jeffery West are corporate officers of ALS. Since ALS did not contract for workers' compensation insurance under the Defense Base Act, its corporate officers are personally and jointly liable under Section 38(a) of the Act for compensation and medical benefits due Claimant.

On March 14, 2006, six days before the instant hearing, Claimant filed an Amended Claim naming Abdul Rahman Al-Ghanim and George H. Lee, Jr., as principals of Employer and as Employers/Parties to the instant proceeding.

The Employers were duly noticed and served with the Notice of Hearing. Neither the Employers nor any representatives appeared at the formal hearing nor did they provide any good cause prior to the hearing why they could not appear for the formal hearing.

On March 23, 2006, an order issued to American Logistics Services to show cause, by April 24, 2006, why it did not appear at the formal hearing or show good cause for not doing so. No response has been filed by American Logistics Services.

On August 7, 2006, an Order issued to Abdul Rahman Al-Ghanim and George H. Lee, Jr. to show cause, by August 28, 2006, why they did not appear at the formal hearing or show cause for not doing so. No response has been filed by Abdul Rahman Al-Ghanim. On August 16, 2006, a response was filed by George H. Lee, Jr., which enclosed the October 13, 2005 response filed with the District Director and reiterates the position therein. No explanation was advanced for his or the Employer's failure to appear at the formal hearing or show cause for not doing so.

I. ISSUES

The unresolved issues presented by the parties are:

1. Causation; fact of injury.

2. The nature and extent of Claimant's disability.

3. Whether Claimant has reached maximum medical improvement.

4. The reasonableness and necessity of recommended surgery.

5. Claimant's average weekly wage.

6. Entitlement to and authorization for medical care and services.

7. Attorney's fees, penalties and interest.

II. STATEMENT OF THE CASE

The Testimonial Evidence

Claimant

Claimant testified at the hearing that he completed high school after which he joined the U.S. Air Force. He served 20 years and retired with an honorable discharge. His military tenure involved working supply and warehousing operations for the first ten years and education and training the last ten years. (Tr. 15-17).

He began working for the federal government after his military retirement. His activities involved the supply field where he engaged in warehousing, shipping/receiving, storing and issuing supplies. (Tr. 17-18). In May 2004, he was hired by MPRI, which was contracted to supply soldiers in Iraq. (Tr. 21). He worked for MPRI for one month in Iraq at which time the company decided "to pull their operations out of Iraq" and move to Kuwait. (Tr. 22).

Claimant testified he met George Lee, President of American Logistics Services (ALS), during his entry into Iraq, who recruited him to work for the start-up company. After MPRI moved to Kuwait, Claimant contacted Lee to make him aware that Claimant was available for employment. (Tr. 23). It was his understanding that Abdul Rahman Al-Ghanim was chairman of ALS. (Tr. 63).

Claimant stated he never had any shoulder injuries or filed any workers' compensation claims in the past. (Tr. 23, 63).

Claimant was hired by ALS on June 26, 2004, and was required to start a warehouse from scratch. He began as a warehouse specialist and within a month was promoted to warehouse manager. (Tr. 24; CX-3, p. 11). His annual salary

was $100,000.01, which included a base salary of $74,074.08, danger premium of 25% or $18,518.52 and completion bonus of 10% or $7,407.41. (Tr. 65; CX-4, p. 14). The warehouse facility at which Claimant worked housed materials owned by the U.S. Government. SFC Alexander Delannoy was the military liaison with ALS who worked with Claimant. (Tr. 25). During the eight months Claimant worked for ALS, he worked seven days per week and every day over five per week was a bonus or overtime day. (Tr. 27).

On December 5, 2004, Claimant expected an influx of individuals to withdraw items of supply from the warehouse. He and his assistant manager left the warehouse facility on December 4, 2004, to meet with security forces to arrange the early entry of the Iraqi warehouse employees employed by ALS for December 5, 2004. (Tr. 30). Upon their return to the warehouse facility, one of the ALS employees informed Claimant that they had been kicked out of the warehouse. Upon entering the warehouse, Claimant observed MSG Saccente and SSG Helmbrecht in the warehouse. He inquired what they were doing and was told they were issuing materials to "some Iraqi people" present in the warehouse. Claimant responded that they had no authority to do so and that only he had authority to issue materials which were under his responsibility. (Tr. 31).

Claimant asked the NCOs to leave the warehouse and MSG Saccente refused. Claimant attempted to telephone LTC Selph, the military contract manager, and Victor Noe, his Iraqi program manager, as well as George Lee of ALS. Since he could not make contact with anyone, he decided to lock the facility to prevent "them from taking anything out of it." He testified that MSG Saccente ran up behind him and grabbed his arm and "twisted it behind my back." He heard a "pop," but "there was no great pain." The next day he felt something different. (Tr. 32, 36). Claimant stated he was attempting to lock the facility because it was his responsibility to safeguard the materials and supplies. After MSG Saccente released him, Claimant went outside to telephone his supervisors without success. Shortly thereafter, the base MPs arrived and investigated the incident. (Tr. 33-34).

LTC Selph acquired statements from the individuals involved but did not take statements from the ALS workers present in the warehouse. (Tr. 38). LTC Selph arranged for a convoy to transport Claimant to Baghdad to have his shoulder examined on December 9, 2004. Claimant was informed by the orthopedist on duty that he had a possible tear in his rotator cuff which could

not be substantiated without an MRI. (CX-6, p. 27) No MRI capability was available at the time in Iraq and evacuation of Claimant for an MRI was recommended. Claimant notified his ALS superiors that an MRI was necessary. (Tr. 40; CX-10, p. 34). Claimant traveled to Kuwait and had an MRI performed on December 29, 2004, which confirmed a partial tear in his rotator cuff. He was informed the condition required surgery. Claimant testified the Kuwaiti doctors told him that they did not have the expertise to perform the needed surgery and recommended he travel to Germany or the United States to have the surgery performed. (Tr. 41).

Claimant reported the opinions of the Kuwaiti doctors to George Lee who became upset and informed Claimant that "it wasn't going to happen." Claimant instead underwent therapy for ten days. (Tr. 42; CX-6, p. 26). A second MRI revealed the same result and the need for surgery. (CX-6, pp. 17, 19). George Lee then sent Claimant for a third MRI on March 15, 2005, which again reported the same result and need for surgery. (CX-5, p. 16). Claimant testified that he wanted the surgery. (Tr. 43). Claimant e-mailed Lee and reported the doctor's opinions. Lee informed Claimant that if he went to the United States to seek medical care he would be terminated. (Tr. 43; CX-10, p. 35).

Claimant continued to work for ALS and his shoulder pain increased with activity. He assisted in off-loading trailers, putting supplies on shelves, taking supplies out of boxes and preparing them for issue. (Tr. 68). On March 9, 2005, he was diagnosed with a partial tear with an inflammatory reaction. The treating doctor opined that for 100% recovery Claimant needed arthroscopic surgery. (Tr. 68-69; CX-6, p. 17).

Claimant was then sent to Umm Qasar in southern Iraq for the last two months of his employment to work at a seaport. (Tr. 43-44). He testified he was getting medical care for his shoulder while working at the seaport and became dehydrated. (Tr. 45). On March 27, 2005, Dr. Hewitt of the 566th ASMC completed an "Individual Sick Slip" in which it was recommended that he not travel for 48 hours and because of his multiple medical problems it was suggested optimal medical care should be obtained in the U.S. (Tr. 46; CX-6, p. 25). Claimant provided the sick slip to Jim Martin, his supervisor.

On March 28, 2005, in response to the sick slip, Mr. Martin informed Claimant that he was "going to take the doctors advice and terminate your employment on this contract allowing you to

return to the U.S. and get the treatment you need." Claimant was terminated effective March 31, 2005, to conform to the doctor's recommendation that he not travel for 48 hours. (Tr. 46; CX-10, p. 36).

On March 29, 2005, Claimant received a letter from George Lee which confirmed his medical termination from ALS due to his existing medical conditions and his inability to perform his duties and responsibilities "coupled with your request to terminate your employment with ALS." (Tr. 47; CX-10, p. 37). Although the letter referenced a 15-day notice period and payment of unused vacation days and a pro-rated completion bonus at 10%, Claimant testified he only received transportation back to Hawaii and vacation pay. (Tr. 47, 81-82). Claimant testified he did not request termination, nor did any doctor ever inform him he needed to be medically terminated. (Tr. 48, 80-81). He refused to sign his "Final Settlement Computation" of March 31, 2005, which reflected that he had "resigned" and because it did not include a completion bonus. (Tr. 66-67; CX-4, p. 15).

Claimant further testified he never received any workers' compensation benefits or medical care from ALS. (Tr. 49). He had surgery performed on his shoulder through TRICARE and his military retirement. (Tr. 49-50). He was only able to afford three days of co-pay for physical therapy through TRICARE. (Tr. 50). Of the Columbus Orthopedic Clinic billings for $13,255.00, TRICARE paid $1,424.25. (Tr. 96; CX-18, p. 77). Of the Baptist Memorial Hospital billings of $14,718.40, TRICARE paid $4,150.63. (Tr. 97; CX-18, p. 78).

On January 23, 2006, Claimant began employment as a logistics management supervisor for the U.S. Army at an annual salary of $38,175.00. (Tr. 51; 97-98; CX-20, p. 88).

The U.S. Army Inquiry

LTC Levonda J. Selph, Contracting Officer Representative, conducted an "independent inquiry" of the events of December 4, 2004, which involved Claimant's injury. She concluded that Claimant "brought this incident upon himself" and "if he had been available to do the job he was hired to do, it would never have happened." It was her conclusion that MSG Saccente was trying to complete a mission, i.e., "receive equipment for the Iraqi Police." Claimant's responsibility was to issue the equipment, but he was not available. MSG Saccente "took matters into his own hands." (CX-11, p. 38).

Claimant provided a written statement of the events which comport with his hearing testimony. (CX-11, p. 39). MSG William Saccente provided a written statement wherein he acknowledges grabbing Claimant's wrist and turning his arm behind his back and pushing him away from the doors. His version that Claimant first grabbed his arm is disputed by the Iraqi workers who provided statements. (CX-11, pp. 40-41). SSG Kevin Helmbrecht's statement corroborates Claimant grabbed MSG Saccente and pulled him toward the door as well as Claimant's arm being pulled behind his back by MSG Saccente. (CX-11, p. 42).

Adam Jaffar Abdalla, work leader of the warehouse, confirmed that Claimant requested the soldiers, who had no authorization to be in the warehouse, to leave the warehouse and Claimant attempted to close the door to the warehouse. He did not discuss any arm grabbing by Claimant or MSG Saccente. (CX-11, pp. 45-46). Bahjet Nours Mohammed, a warehouse worker, provided a statement in which he verified that Claimant asked the soldiers to leave the warehouse and tried to close the door when a soldier caught Claimant's hand and put "them behind his back." Claimant never touched the soldiers according to Mohammed. (CX-11, p. 49).

Mohammed Salam Ridha, Claimant's assistant, provided a statement wherein he stated when he and Claimant arrived at the warehouse the workers were outside the warehouse; Claimant told MSG Saccente that he was not authorized to be in the warehouse and he had to leave because it was a controlled area, but MSG Saccente refused to leave. Claimant tried to close the door but MSG Saccente took his hand and put it behind Claimant's back and "cut his watch." He confirmed Claimant did not touch MSG Saccente. (CX-11, pp. 51-52). Mustafa Ibraham, a warehouse worker, stated they told the soldiers they were not authorized but they refused to leave the warehouse; Claimant arrived and also asked the soldiers to leave but they refused; Claimant tried to close the door but MSG Saccente caught Claimant and put "them" behind his back and Claimant never touched MSG Saccente. (CX-11, pp. 53-55).

The Medical Evidence

On December 9, 2004, Claimant was examined at a military hospital in the "Green Zone" where he related his accident when his arm was "wrenched" behind his back and he heard a "pop." He related he had not been able to elevate his arm without pain.

The doctor's diagnosis was right rotator cuff tear. It was recommended that Claimant be evacuated for an MRI which was not available "in theater" and for rehabilitation and possible surgical intervention. (CX-6, p. 27).

On December 28, 2004, Claimant traveled to Kuwait and underwent an MRI. Dr. Yahya Slaiman interpreted the MRI as reflecting a partial low grade tear with inflammatory reaction of supraspinatous tendon and biceps longus head tendon. (CX-16, p. 69).

Claimant underwent 12 physical therapy sessions with Dr. Dorin Danciu and was released with home exercises on February 3, 2005. (CX-6, p. 26). On March 8, 2004, Claimant consulted Dr. Dorin Danciu of Kuwait in follow-up after physiotherapy to obtain a new MRI to determine if he needed more conservative treatment or surgery. (CX-6, p. 19). The new MRI of March 9, 2005, revealed no significant changes from the MRI of December 28, 2004. (CX-16, p. 70; CX-6, p. 17).

On March 15, 2005, Claimant underwent a third MRI which was interpreted by Dr. Tarek Darwish as showing post-traumatic status of "disrubted acromio-calvicular joint; full thickness tear supraspinatous tendon; minimal shoulder joint effusion." (CX-5, p. 16).

On April 6, 2005, Claimant was evaluated at Tripler Army Medical Center, Tripler AMC, Hawaii, upon his return to the United States. MAJ Hung D. Nguyen, M.D., opined that Claimant likely required surgical repair of his rotator cuff given the lack of improvement in the level of shoulder pain and range of motion. He further opined such limitations would also hinder various physical activities involving Claimant's upper extremity and may make performing his work duties more difficult. (CX-6, pp. 23-24). Claimant continued rehabilitation treatment at Tripler Medical Center in May 2005. (CX-15).

Claimant moved from Hawaii to Mississippi where he began treating at Columbus Orthopedic Clinic in Columbus, Mississippi. He first consulted Dr. Chad S. Altmyer on July 18, 2005, who ordered x-rays which showed severe arthritis with total joint obliteration and spurs. He reviewed all three MRIs which also revealed severe impingement with AC arthritis and a slight tear of the supraspinatous. His impression was right shoulder pathology with positive AC arthritis and impingement, biceps tendonitis and possible rotator cuff tear.

On July 22, 2005, Claimant underwent right shoulder arthroscopy and right open rotator cuff repair at Baptist Memorial Hospital in Columbus, Mississippi. CX-7). He began physical therapy on July 28, 2005, at the Columbus Air Force Base, Mississippi. (CX-6, pp. 18, 20-21).

The Contentions of the Parties

Claimant contends that he was injured while performing his warehousing duties in the employ of ALS on December 4, 2005. He seeks temporary total disability compensation benefits from March 31, 2005, when he was terminated by ALS, to January 23, 2006, when he began employment with the U.S. Army as a Logistics Management Supervisor. He also contends he suffered a loss of wage earning capacity and seeks "temporary partial disability" compensation benefits from January 23, 2006 to present and continuing.

Employer's October 13, 2005 response, with attachments, was originally mailed in answer to Claimant's claim addressed to the OWCP Claims Examiner and to the undersigned in response to the Order To Show Cause. (CX-12). Therein, Mr. Lee contends Claimant has distorted the truth and represents it was Claimant's decision to leave Kuwait and terminate his employment with ALS. He further contends, without explanation, that Claimant does not qualify for benefits under the Defense Base Act and admits that ALS pays no insurance premiums for workers' compensation insurance. He asserts that since Claimant is retired from the U.S. military, he can seek medical care through low-cost TRICARE coverage. Thus, Claimant's medical care should be borne by the U.S. Government, not ALS.

III. DISCUSSION

It has been consistently held that the Act must be construed liberally in favor of the Claimant. Voris v. Eikel, 346 U.S. 328, 333 (1953); J. B. Vozzolo, Inc. v. Britton, 377 F.2d 144 (D.C. Cir. 1967). However, the United States Supreme Court has determined that the "true-doubt" rule, which resolves factual doubt in favor of the Claimant when the evidence is evenly balanced, violates Section 7(c) of the Administrative Procedure Act, 5 U.S.C. Section 556(d), which specifies that the proponent of a rule or position has the burden of proof and, thus, the burden of persuasion. Director, OWCP v. Greenwich Collieries, 512 U.S. 267, 114 S.Ct. 2251 (1994), aff'g. 990 F.2d 730 (3rd Cir. 1993).

In arriving at a decision in this matter, it is well-settled that the finder of fact is entitled to determine the credibility of witnesses, to weigh the evidence and draw his own inferences therefrom, and is not bound to accept the opinion or theory of any particular medical examiners. Duhagon v. Metropolitan Stevedore Company, 31 BRBS 98, 101 (1997); Avondale Shipyards, Inc. v. Kennel, 914 F.2d 88, 91 (5th Cir. 1988); Atlantic Marine, Inc. and Hartford Accident & Indemnity Co. v. Bruce, 551 F.2d 898, 900 (5th Cir. 1981); Bank v. Chicago Grain Trimmers Association, Inc., 390 U.S. 459, 467, reh'g denied, 391 U.S. 929 (1968).

A. The Compensable Injury

Section 2(2) of the Act defines "injury" as "accidental injury or death arising out of or in the course of employment." 33 U.S.C. § 902(2). Section 20(a) of the Act provides a presumption that aids the Claimant in establishing that a harm constitutes a compensable injury under the Act. Section 20(a) of the Act provides in pertinent part:

> In any proceeding for the enforcement of a claim for compensation under this Act it shall be presumed, in the absence of substantial evidence to the contrary- that the claim comes within the provisions of this Act.

33 U.S.C. § 920(a).

The Benefits Review Board (herein the Board) has explained that a claimant need not affirmatively establish a causal connection between his work and the harm he has suffered, but rather need only show that: (1) he sustained physical harm or pain, and (2) an accident occurred in the course of employment, or conditions existed at work, which could have caused the harm or pain. Kelaita v. Triple A Machine Shop, 13 BRBS 326 (1981), aff'd sub nom. Kelaita v. Director, OWCP, 799 F.2d 1308 (9th Cir. 1986); Merrill v. Todd Pacific Shipyards Corp., 25 BRBS 140 (1991); Stevens v. Tacoma Boat Building Co., 23 BRBS 191 (1990). These two elements establish a **prima facie** case of a compensable "injury" supporting a claim for compensation. Id.

1. Claimant's Prima Facie Case

Claimant's **credible** subjective complaints of symptoms and pain can be sufficient to establish the element of physical harm necessary for a **prima facie** case and the invocation of the

Section 20(a) presumption. See Sylvester v. Bethlehem Steel Corp., 14 BRBS 234, 236 (1981), aff'd sub nom. Sylvester v. Director, OWCP, 681 F.2d 359, 14 BRBS 984 (CRT)(5th Cir. 1982).

In the present matter, Claimant credibly testified to the events which led to his accident and injury of December 4, 2004. His shoulder was wrenched up behind his back. He felt and heard a "pop" and suffered pain the following day.

Thus, Claimant has established a **prima facie** case that he suffered an "injury" under the Act, having established that he suffered a harm or pain on December 4, 2004, and that his working conditions and activities on that date could have caused the harm or pain sufficient to invoke the Section 20(a) presumption. Cairns v. Matson Terminals, Inc., 21 BRBS 252 (1988).

2. Employer's Rebuttal Evidence

Once Claimant's **prima facie** case is established, a presumption is invoked under Section 20(a) that supplies the causal nexus between the physical harm or pain and the working conditions which could have cause them.

The burden shifts to the employers to rebut the presumption with substantial evidence to the contrary that Claimant's condition was neither caused by his working conditions nor aggravated, accelerated or rendered symptomatic by such conditions. See Conoco, Inc. v. Director, OWCP [Prewitt], 194 F.3d 684, 33 BRBS 187 (CRT)(5th Cir. 1999); Gooden v. Director, OWCP, 135 F.3d 1066, 32 BRBS 59 (CRT)(5th Cir. 1998); Louisiana Ins. Guar. Ass'n v. Bunol, 211 F.3d 294, 34 BRBS 29(CRT)(5th Cir. 1999); Lennon v. Waterfront Transport, 20 F.3d 658, 28 BRBS 22 (CRT)(5th Cir. 1994). "Substantial evidence" means evidence that reasonable minds might accept as adequate to support a conclusion. Avondale Industries v. Pulliam, 137 F.3d 326, 328 (5th Cir. 1998); Ortco Contractors, Inc. v. Charpentier, 332 F.3d 283 (5th Cir. 2003) (the evidentiary standard necessary to rebut the presumption under Section 20(a) of the Act is "less demanding than the ordinary civil requirement that a party prove a fact by a preponderance of evidence").

Employers must produce facts, not speculation, to overcome the presumption of compensability. Reliance on mere hypothetical probabilities in rejecting a claim is contrary to the presumption created by Section 20(a). See Smith v. Sealand Terminal, 14 BRBS 844 (1982). The testimony of a physician that

no relationship exists between an injury and a claimant's employment is sufficient to rebut the presumption. See Kier v. Bethlehem Steel Corp., 16 BRBS 128 (1984).

If an administrative law judge finds that the Section 20(a) presumption is rebutted, he must weigh all of the evidence and resolve the causation issue based on the record as a whole. Universal Maritime Corp. v. Moore, 126 F.3d 256, 31 BRBS 119(CRT)(4th Cir. 1997); Hughes v. Bethlehem Steel Corp., 17 BRBS 153 (1985); Director, OWCP v. Greenwich Collieries, supra.

Employers have presented no evidence to rebut the presumption established by Claimant.

Section 3(c) contains the only provision under the Act for barring benefits due to an employee's misconduct. Assuming **arguendo** that Employers urge a denial of benefits based on Claimant's alleged misconduct, I find that under the circumstances Claimant did not engage in any deliberate, intentional or unexcused misconduct which may have resulted in his work-related injury. Assuming further that he initiated contact with MSG Saccente and the events occurred as alleged by MSG Saccente, I find Claimant was performing his warehousing duties to preserve the supplies entrusted to his charge and MSG Saccente had arguably exceeded his authority to be in a controlled area. See generally Bludworth Shipyard, Inc. v. Lira, 700 F.2d 1046 (5th Cir. 1983). Accordingly, I find Employers have not rebutted the Section 20(a) presumption.

B. Nature and Extent of Disability

Having found that Claimant suffers from a compensable injury, the burden of proving the nature and extent of his disability rests with the Claimant. Trask v. Lockheed Shipbuilding Construction Co., 17 BRBS 56, 59 (1980).

Disability is generally addressed in terms of its nature (permanent or temporary) and its extent (total or partial). The permanency of any disability is a medical rather than an economic concept.

Disability is defined under the Act as an "incapacity to earn the wages which the employee was receiving at the time of injury in the same or any other employment." 33 U.S.C. § 902(10). Therefore, for Claimant to receive a disability award, an economic loss coupled with a physical and/or psychological impairment must be shown. Sproull v. Stevedoring Servs. of

America, 25 BRBS 100, 110 (1991). Thus, disability requires a causal connection between a worker's physical injury and his inability to obtain work. Under this standard, a claimant may be found to have either suffered no loss, a total loss or a partial loss of wage earning capacity.

Permanent disability is a disability that has continued for a lengthy period of time and appears to be of lasting or indefinite duration, as distinguished from one in which recovery merely awaits a normal healing period. Watson v. Gulf Stevedore Corp., 400 F.2d 649, pet. for reh'g denied sub nom. Young & Co. v. Shea, 404 F.2d 1059 (5th Cir. 1968)(per curiam), cert. denied, 394 U.S. 876 (1969); SGS Control Services v. Director, OWCP, 86 F.3d 438, 444 (5th Cir. 1996). A claimant's disability is permanent in nature if he has any residual disability after reaching maximum medical improvement. Trask, supra, at 60. Any disability suffered by Claimant before reaching maximum medical improvement is considered temporary in nature. Berkstresser v. Washington Metropolitan Area Transit Authority, 16 BRBS 231 (1984); SGS Control Services v. Director, OWCP, supra, at 443.

The question of extent of disability is an economic as well as a medical concept. Quick v. Martin, 397 F.2d 644 (D.C. Cir 1968); Eastern S.S. Lines v. Monahan, 110 F.2d 840 (1st Cir. 1940); Rinaldi v. General Dynamics Corporation, 25 BRBS 128, 131 (1991).

To establish a **prima facie** case of total disability, the claimant must show that he is unable to return to his regular or usual employment due to his work-related injury. Elliott v. C & P Telephone Co., 16 BRBS 89 (1984); Harrison v. Todd Pacific Shipyards Corp., 21 BRBS 339 (1988); Louisiana Insurance Guaranty Association v. Abbott, 40 F.3d 122, 125 (5th Cir. 1994).

Claimant's present medical restrictions must be compared with the specific requirements of his usual or former employment to determine whether the claim is for temporary total or permanent total disability. Curit v. Bath Iron Works Corp., 22 BRBS 100 (1988). Once Claimant is capable of performing his usual employment, he suffers no loss of wage earning capacity and is no longer disabled under the Act.

C. Maximum Medical Improvement (MMI)

The traditional method for determining whether an injury is permanent or temporary is the date of maximum medical

improvement. See Turney v. Bethlehem Steel Corp., 17 BRBS 232, 235, n. 5 (1985); Trask v. Lockheed Shipbuilding Construction Co., supra; Stevens v. Lockheed Shipbuilding Company, 22 BRBS 155, 157 (1989). The date of maximum medical improvement is a question of fact based upon the medical evidence of record. Ballesteros v. Willamette Western Corp., 20 BRBS 184, 186 (1988); Williams v. General Dynamics Corp., 10 BRBS 915 (1979).

An employee reaches maximum medical improvement when his condition becomes stabilized. Cherry v. Newport News Shipbuilding & Dry Dock Co., 8 BRBS 857 (1978); Thompson v. Quinton Enterprises, Limited, 14 BRBS 395, 401 (1981).

In the present matter, nature and extent of disability and maximum medical improvement will be treated concurrently for purposes of explication.

Claimant sought medical treatment as soon as a convoy was arranged for his travel to a hospital in the "Green Zone." He was diagnosed with a rotator cuff tear which required further diagnostic testing to determine the extent of his injury. Three MRIs determined that a rotator cuff tear existed which required possible surgical intervention. There is no other record explanation offered for the injury or its residual limitations imposed upon Claimant.

Claimant performed his duties thereafter in Umm Qasar while undergoing medical treatment and physical therapy. He testified that he could not have performed his physical duties of lifting, carrying and shelving supplies required of his former job in Iraq. He suffered increased pain with increased activity. The medical evidence established limitations on range of motion and pain caused by his right shoulder condition. Employers recognized Claimant's limitations and moved him to Umm Qasar where he performed other duties at the southern Iraq seaport.

Claimant returned to the United States to seek medical care and treatment to include surgery. The uncontradicted evidence of record establishes that he was advised by Kuwaiti doctors to seek surgery in Germany or the United States because of their lack of expertise. On March 11, 2005, Claimant was informed by George Lee of ALS that if he elected to return to the United States for medical treatment "it will be on your own as a terminating (sic) employee." (CX-10, p. 35).

As noted on March 28, 2005, Jim Martin, the Iraq Project Manager, advised Claimant that he was "going to take the doctors

advice and terminate your employment contract allowing you to return to the U.S. and get the treatment you need." (CX-10, p. 36). There is no evidence of record that any doctor recommended or advised Claimant should be terminated from his employment contract. On March 29, 2005, George Lee issued a medical termination letter to Claimant "due to your existing medical conditions and inability to perform your duties and responsibilities." Contrary to the letter, Claimant credibly testified that he never requested termination of his employment with ALS. (CX-10, p. 37).

Employers clearly acknowledge that Claimant could no longer perform the job duties of his former employment, which comports with Claimant's credible testimony. Therefore, I find that Claimant was temporarily totally disabled effective March 31, 2005, when he was terminated by Employers. He is entitled to temporary total disability compensation benefits based on an average weekly wage of $1,923.08 and the maximum compensation rate of $1,047.16, as discussed below.

There is no medical evidence that establishes Claimant reached maximum medical improvement. However, Claimant agrees that he reached maximum medical improvement effective January 23, 2006, when he began alternative employment. Accordingly, I find that Claimant reached permanency on January 23, 2006, and was permanently partially disabled thereafter based on a loss of wage earning capacity.

D. Suitable Alternative Employment

If the claimant is successful in establishing a **prima facie** case of total disability, as here, the burden of proof is shifted to employer to establish suitable alternative employment. New Orleans (Gulfwide) Stevedores v. Turner, 661 F.2d 1031, 1038 (5th Cir. 1981). Addressing the issue of job availability, the Fifth Circuit has developed a two-part test by which an employer can meet its burden:

> (1) Considering claimant's age, background, etc., what can the claimant physically and mentally do following his injury, that is, what types of jobs is he capable of performing or capable of being trained to do?
>
> (2) Within the category of jobs that the claimant is reasonably capable of performing, are there jobs reasonably available in the community for which the

claimant is able to compete and which he reasonably and likely could secure?

Id. at 1042. Turner does not require that employers find specific jobs for a claimant; instead, the employer may simply demonstrate "the availability of general job openings in certain fields in the surrounding community." P & M Crane Co. v. Hayes, 930 F.2d 424, 431 (1991); Avondale Shipyards, Inc. v. Guidry, 967 F.2d 1039 (5th Cir. 1992).

However, the employer must establish **the precise nature and terms** of job opportunities it contends constitute suitable alternative employment in order for the administrative law judge to rationally determine if the claimant is physically and mentally capable of performing the work and that it is realistically available. Piunti v. ITO Corporation of Baltimore, 23 BRBS 367, 370 (1990); Thompson v. Lockheed Shipbuilding & Construction Company, 21 BRBS 94, 97 (1988). The administrative law judge must compare the jobs' requirements identified by the vocational expert with the claimant's physical and mental restrictions based on the medical opinions of record. Villasenor v. Marine Maintenance Industries, Inc., 17 BRBS 99 (1985); See generally Bryant v. Carolina Shipping Co., Inc., 25 BRBS 294 (1992); Fox v. West State, Inc., 31 BRBS 118 (1997). Should the requirements of the jobs be absent, the administrative law judge will be unable to determine if claimant is physically capable of performing the identified jobs. See generally P & M Crane Co., supra at 431; Villasenor, supra. Furthermore, a showing of only one job opportunity may suffice under appropriate circumstances, for example, where the job calls for **special skills** which the claimant possesses and there are few qualified workers in the local community. P & M Crane Co., supra at 430. Conversely, a showing of one unskilled job may not satisfy Employer's burden.

Once the employer demonstrates the existence of suitable alternative employment, as defined by the Turner criteria, the claimant can nonetheless establish total disability by demonstrating that he tried with reasonable diligence to secure such employment and was unsuccessful. Turner, supra at 1042-1043; P & M Crane Co., supra at 430. Thus, a claimant may be found totally disabled under the Act "when physically capable of performing certain work but otherwise unable to secure that particular kind of work." Turner, supra at 1038, quoting Diamond M. Drilling Co. v. Marshall, 577 F.2d 1003 (5th Cir. 1978).

The Benefits Review Board has announced that a showing of available suitable alternate employment may not be applied retroactively to the date the injured employee reached MMI and that an injured employee's total disability becomes partial on the earliest date that the employer shows suitable alternate employment to be available. Rinaldi v. General Dynamics Corporation, 25 BRBS at 131 (1991).

The record reveals no efforts by Employers to provide or identify suitable alternative employment for Claimant. Claimant engaged in a job search and found alternative employment with the U.S. Army which I find to be suitable. Thus, his disability is deemed partial and not total. Claimant's gross annual salary is $38,175.00 in his alternative employment (CX-20, p. 88) or $862.00 per week which is less than his projected wages for Employers pursuant to his salary adjustment of August 18, 2004. (CX-4, p. 14). Accordingly, Claimant has suffered a loss of wage earning capacity for which he should be compensated. Claimant is entitled to permanent partial disability compensation benefits based on the difference between his current gross weekly wages of $862.00 and his average weekly wage of $1,923.08, as discussed below.

E. Average Weekly Wage

Section 10 of the Act sets forth three alternative methods for calculating a claimant's average annual earnings, 33 U.S.C. § 910 (a)-(c), which are then divided by 52, pursuant to Section 10(d), to arrive at an average weekly wage. The computation methods are directed towards establishing a claimant's earning power at the time of injury. SGS Control Services v. Director, OWCP, supra, at 441; Johnson v. Newport News Shipbuilding & Dry Dock Co., 25 BRBS 340 (1992); Lobus v. I.T.O. Corp., 24 BRBS 137 (1990); Barber v. Tri-State Terminals, Inc., 3 BRBS 244 (1976), aff'd sum nom. Tri-State Terminals, Inc. v. Jesse, 596 F.2d 752, 10 BRBS 700 (7th Cir. 1979).

Section 10(a) provides that when the employee has worked in the same employment for substantially the whole of the year immediately preceding the injury, his annual earnings are computed using his actual **daily** wage. 33 U.S.C. § 910(a). Section 10(b) provides that if the employee has not worked substantially the whole of the preceding year, his average annual earnings are based on the average **daily** wage of any employee in the same class who has worked substantially the whole of the year. 33 U.S.C. § 910(b). But, if neither of these two methods "can reasonably and fairly be applied" to

determine an employee's average annual earnings, then resort to Section 10(c) is appropriate. Empire United Stevedore v. Gatlin, 935 F.2d 819, 821, 25 BRBS 26 (CRT) (5th Cir. 1991).

Subsections 10(a) and 10(b) both require a determination of an average **daily** wage to be multiplied by 300 days for a 6-day worker and by 260 days for a 5-day worker in order to determine average annual earnings.

Claimant worked as a warehouse manager from June 26, 2004 until March 31, 2005, a total of 39 4/7 weeks, which is "substantially all of the year" as required for a calculation under subsections 10(a) and 10(b). See Duncan v. Washington Metropolitan Area Transit Authority, 24 BRBS 133, 136 (1990)(34.5 weeks is substantially all of the year; the nature of Claimant's employment must be considered, i.e., whether intermittent or permanent).

However, based on the record evidence which does not include Claimant's payroll records, Claimant's daily wage cannot be computed. Only his gross annual wages are known. His daily hours of work, number of days worked and hourly rate are not reflected in the wage record, and therefore a daily wage cannot be calculated. The record testimony also reveals Claimant was neither a five-day or six-day worker. Moreover, Section 10(b) is inappropriate since no wages of similarly situated employees who worked substantially the whole of the **immediately preceding** year are of record. Accordingly, I find that neither Section 10(a) and 10(b) should be used to calculate Claimant's average weekly wage.

Section 10(c) of the Act provides:

> If either [subsection 10(a) or 10(b)] cannot reasonably and fairly be applied, such average annual earnings shall be such sum as, having regard to the previous earnings of the injured employee and the employment in which he was working at the time of his injury, and of other employees of the same or most similar class working in the same or most similar employment in the same or neighboring locality, or other employment of such employee, including the reasonable value of the services of the employee if engaged in self-employment, shall reasonably represent the annual earning capacity of the injured employee.

33 U.S.C § 910(c).

The Administrative Law Judge has broad discretion in determining annual earning capacity under subsection 10(c). Hayes v. P & M Crane Co., supra; Hicks v. Pacific Marine & Supply Co., Ltd., 14 BRBS 549 (1981). It should also be stressed that the objective of subsection 10(c) is to reach a fair and reasonable approximation of a claimant's wage-earning capacity **at the time of injury**. Barber v. Tri-State Terminals, Inc., supra. Section 10(c) is used where a claimant's employment, as here, is seasonal, part-time, intermittent or discontinuous. Empire United Stevedores v. Gatlin, supra, at 822.

I conclude that because Sections 10(a) and 10(b) of the Act can not be applied, Section 10(c) is the appropriate standard under which to calculate average weekly wage in this matter.

In Miranda v. Excavation Construction Inc., 13 BRBS 882 (1981), the Board held that a worker's average wage should be based on his earnings for the seven or eight weeks that he worked for the employer rather than on the entire prior year's earnings because a calculation based on the **wages at the employment where he was injured** would best adequately reflect the Claimant's earning capacity at the time of the injury.

Claimant proposes several alternative methods to calculate his average weekly wage under Section 10(c). I find and conclude the most appropriate, fair and reasonable method of computing Claimant's average weekly wage is to award an average weekly wage commensurate with his earning power and potential at the time of his injury.

Clearly, Claimant's employment with Employers resulted in an enhanced earning capacity under his employment contract. In the absence of injury it is undeterminable how long Claimant would have worked in Iraq for Employers. However, Claimant may not have worked in Iraq for the remainder of his work life.

I find Claimant's gross annual salary of $100,000.01 with Employers, which includes danger pay and a completion bonus, when divided by 52 weeks yields an average weekly wage of $1,923.08 and a corresponding compensation rate of $1,282.12 ($1,923.08 x .6667). The maximum compensation benefit rate established by the U.S. Department of Labor for the year in which Claimant's date of injury occurred is $1,047.16.

Therefore, since Claimant is presently working in an alternative job earning a gross weekly wage of $862.00, I have determined that Claimant suffered a loss of wage earning capacity. He is entitled to two-thirds of the difference between his average weekly wage and his present gross weekly earnings which is $707.42 ($1,923.08 - $862.00 = $1,061.08 x .6667) effective January 23, 2006.

F. Entitlement to Medical Care and Benefits

Section 7(a) of the Act provides that:

> The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus, for such period as the nature of the injury or the process of recovery may require.

33 U.S.C. § 907(a).

The Employer is liable for all medical expenses which are the natural and unavoidable result of the work injury. For medical expenses to be assessed against the Employer, the expense must be both reasonable and necessary. Pernell v. Capitol Hill Masonry, 11 BRBS 532, 539 (1979). Medical care must also be appropriate for the injury. 20 C.F.R. § 702.402.

A claimant has established a **prima facie** case for compensable medical treatment where a qualified physician indicates treatment was necessary for a work-related condition. Turner v. Chesapeake & Potomac Tel. Co., 16 BRBS 255, 257-258 (1984).

Section 7 does not require that an injury be economically disabling for claimant to be entitled to medical benefits, but only that the injury be work-related and the medical treatment be appropriate for the injury. Ballesteros v. Willamette Western Corp., 20 BRBS 184, 187.

Entitlement to medical benefits is never time-barred where a disability is related to a compensable injury. Weber v. Seattle Crescent Container Corp., 19 BRBS 146 (1980); Wendler v. American National Red Cross, 23 BRBS 408, 414 (1990).

An employer is not liable for past medical expenses unless the claimant first requested authorization prior to obtaining medical treatment, except in the cases of emergency, neglect or

refusal. Schoen v. U.S. Chamber of Commerce, 30 BRBS 103 (1997); Maryland Shipbuilding & Drydock Co. v. Jenkins, 594 F.2d 404, 10 BRBS 1 (4th Cir. 1979), rev'g 6 BRBS 550 (1977). Once an employer has refused treatment or neglected to act on claimant's request for a physician, the claimant is no longer obligated to seek authorization from employer and need only establish that the treatment subsequently procured on his own initiative was necessary for treatment of the injury. Pirozzi v. Todd Shipyards Corp., 21 BRBS 294 (1988); Rieche v. Tracor Marine, 16 BRBS 272, 275 (1984).

The employer's refusal need not be unreasonable for the employee to be released from the obligation of seeking his employer's authorization of medical treatment. See generally 33 U.S.C. § 907 (d)(1)(A). Refusal to authorize treatment or neglecting to provide treatment can only take place after there is an opportunity to provide care, such as after the claimant requests such care. Mattox v. Sun Shipbuilding & Dry Dock Co., 15 BRBS 162 (1982). Furthermore, the mere knowledge of a claimant's injury does not establish neglect or refusal if the claimant never requested care. Id.

Having found that Claimant established a **prima facie** case for a compensable injury while employed with Employers, he is entitled to reasonable and necessary medical care and treatment for which Employers are responsible. The fact that Claimant may also be entitled to medical care through TRICARE as a result of his military service does not relieve Employers of their responsibility to provide reasonable and necessary medical care to Claimant. I further find and conclude that Claimant's medical treatment in the United States, rather than Kuwait or Iraq, as recommended by Kuwaiti physicians, was reasonable under the circumstances.

The medical evidence of record establishes that Claimant suffered injuries on December 4, 2004, which required surgical intervention and subsequent physical therapy. Claimant's treating physician recommended the surgery and physical therapy which I find and conclude were reasonable and necessary for his residual symptoms. Claimant also incurred co-pay payments and expenses related to prescribed medications. Accordingly, I find and conclude that Employers are responsible for the medical treatment provided to Claimant in the United States by the various providers from whom he sought medical care and treatment, to include surgery and services rendered by Columbus Orthopedic Clinic and Baptist Memorial Hospital in Columbus, Mississippi.

IV. THE SECTION 48(a) TERMINATION

Section 48(a) of the Act provides that it shall be unlawful for any employer to discharge or in any other manner discriminate against an employee as to his employment because such employee has claimed or attempted to claim compensation from such employer, or because he had testified or is about to testify in a proceeding under the Act.

Claimant contends he was terminated because he sought medical treatment in the United States and not Iraq/Kuwait. He was terminated effective March 31, 2005. He filed his claim on April 5, 2005.

For liability to attach under Section 48(a), an employer must discriminate against the claimant because of the filing of a claim under the Act or testifying in a proceeding under the Act. Buchanan v. Boh Brothers Construction Company, Inc., 741 F.2d 750 (5th Cir. 1984). Moreover, such discrimination **must** be committed by the employer **after** the filing of a claim or testifying to properly trigger Section 48(a) protection. Geddes v. Director, OWCP, 851 F.2d 440, 443, 21 BRBS 103(CRT)(D.C. Cir. 1988).

For the foregoing reasons, Claimant is not eligible for Section 48(a) protection and his argument that he was terminated for seeking medical treatment **before** he filed his claim is rejected.

V. SECTION 14(e) PENALTY

Section 14(e) of the Act provides that if an employer fails to pay compensation voluntarily within 14 days after it becomes due, or within 14 days after unilaterally suspending compensation as set forth in Section 14(b), the Employer shall be liable for an additional 10% penalty of the unpaid installments. Penalties attach unless the Employer files a timely notice of controversion as provided in Section 14(d).

In the present matter, there is no evidence that Employers filed a notice of controversion. However, an informal conference was held in this matter on September 9, 2005, which tolls the running of penalties.

In accordance with Section 14(b), Claimant was owed compensation on the fourteenth day after Employers were notified

of his injury or compensation was due.[3] Thus, Employers were liable for Claimant's total disability compensation payment on April 14, 2005. A notice of controversion should have been filed by April 14, 2005, to be timely and prevent the application of penalties. Consequently, I find and conclude that Employers did not file a timely notice of controversion on April 14, 2005, and are liable for Section 14(e) penalties from April 15, 2005 until September 8, 2005.

VI. INTEREST

Although not specifically authorized in the Act, it has been an accepted practice that interest at the rate of six per cent per annum is assessed on all past due compensation payments. Avallone v. Todd Shipyards Corp., 10 BRBS 724 (1974). The Benefits Review Board and the Federal Courts have previously upheld interest awards on past due benefits to insure that the employee receives the full amount of compensation due. Watkins v. Newport News Shipbuilding & Dry Dock Co., aff'd in pertinent part and rev'd on other grounds, sub nom. Newport News v. Director, OWCP, 594 F.2d 986 (4th Cir. 1979). The Board concluded that inflationary trends in our economy have rendered a fixed six per cent rate no longer appropriate to further the purpose of making Claimant whole, and held that ". . . the fixed per cent rate should be replaced by the rate employed by the United States District Courts under 28 U.S.C. § 1961 (1982). This rate is periodically changed to reflect the yield on United States Treasury Bills . . . ." Grant v. Portland Stevedoring Company, et al., 16 BRBS 267 (1984).

Effective February 27, 2001, this interest rate is based on a weekly average one-year constant maturity Treasury yield for the calendar week preceding the date of service of this Decision and Order by the District Director. This order incorporates by reference this statute and provides for its specific administrative application by the District Director.

VII. ATTORNEY'S FEES

No award of attorney's fees for services to the Claimant is made herein since no application for fees has been made by the Claimant's counsel. Counsel is hereby allowed thirty (30) days from the date of service of this decision by the District

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[3] Section 6(a) does not apply since Claimant suffered his disability for a period in excess of fourteen days.

Director to submit an application for attorney's fees.[4] A service sheet showing that service has been made on all parties, including the Claimant, must accompany the petition. Parties have twenty (20) days following the receipt of such application within which to file any objections thereto. The Act prohibits the charging of a fee in the absence of an approved application.

VII. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, and upon the entire record, I enter the following Order:

1. Employers, American Logistics Services, Abdul Rahman Al-Ghanim and George H. Lee, Jr., shall pay Claimant compensation for temporary total disability from March 31, 2005 to January 22, 2006, based on Claimant's average weekly wage of $1,923.08 and a maximum compensation rate of $1,047.16 in accordance with the provisions of Section 8(b) of the Act. 33 U.S.C. § 908(b).

2. Employers, American Logistics Services, Abdul Rahman Al-Ghanim and George H. Lee, Jr., shall pay Claimant compensation for permanent partial disability from January 23, 2006, and continuing based on two-thirds of the difference between Claimant's average weekly wage of $1,923.08 and his reduced weekly earning capacity of $862.00 in accordance with the provisions of Section 8(c) of the Act. 33 U.S.C. § 908(c)(21).

3. Employers, American Logistics Services, Abdul Rahman Al-Ghanim and George H. Lee, Jr., shall pay all reasonable,

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[4] Counsel for Claimant should be aware that an attorney's fee award approved by an administrative law judge compensates only the hours of work expended between the close of the informal conference proceedings and the issuance of the administrative law judge's Decision and Order. Revoir v. General Dynamics Corp., 12 BRBS 524 (1980). The Board has determined that the letter of referral of the case from the District Director to the Office of the Administrative Law Judges provides the clearest indication of the date when informal proceedings terminate. Miller v. Prolerized New England Co., 14 BRBS 811, 813 (1981), aff'd, 691 F.2d 45 (1st Cir. 1982). Thus, Counsel for Claimant is entitled to a fee award for services rendered after **October 24, 2005**, the date this matter was referred from the District Director.

appropriate and necessary medical expenses arising from Claimant's December 4, 2004 work injury, consistent with this Decision and Order, pursuant to the provisions of Section 7 of the Act.

4. Employers shall be liable for an assessment under Section 14(e) of the Act from April 14, 2005 to September 8, 2005.

5. Employers shall pay interest on any sums determined to be due and owing at the rate provided by 28 U.S.C. § 1961 (1982); Grant v. Portland Stevedoring Co., et al., 16 BRBS 267 (1984).

6. Claimant's attorney shall have thirty (30) days from the date of service of this decision by the District Director to file a fully supported fee application with the Office of Administrative Law Judges; a copy must be served on Claimant and opposing counsel who shall then have twenty (20) days to file any objections thereto.

ORDERED this 31st day of August, 2006, at Covington, Louisiana.

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LEE J. ROMERO, JR.
Administrative Law Judge